Office-Supreme Court, U.S.
FILED
MAR 9 1983
ALEXANDER L. STEVAS,
CLERK

No. 82-1361

In the Supreme Court of the United States

OCTOBER TERM, 1982

JON CARY MAIER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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Petitioner contends (Pet. 8-27) that the court of appeals erred in reversing an order suppressing evidence obtained through an impoundment and inventory search of petitioner's camper-truck.

In an indictment returned in the United States District Court for the District of Minnesota, petitioner was charged with possession with intent to distribute of approximately 190 pounds of marijuana, in violation of 21 U.S.C. 841(a)(1). The charge followed the seizure and inventory search, by two Minneapolis police officers, of a pickup truck with a "topper" camper unit. The officers had approached the truck because it was unlawfully parked on a Minneapolis street. Because petitioner's driver's license was under suspension and he accordingly could not lawfully drive it away, the officers impounded the truck and inventoried its contents in anticipation of its being towed away. The

officers discovered a leather pouch containing several thousand dollars in the cab of the truck; when they opened the camper section they saw several opaque plastic garbage bags and detected the odor of marijuana. The officers then arrested petitioner and secured a warrant to search the plastic bags which proved to contain bales of marijuana.

On petitioner's motion, a United States Magistrate recommended that the evidence be suppressed. The magistrate concluded that the officers had failed to comply with municipal regulations governing impoundment and inventory procedures and that the intrusion into the camper accordingly was improper. Alternatively, the magistrate recommended that the court find that the officers opened the plastic garbage bags without a warrant, effecting an unlawful search (Pet. App. C1-C9). Rejecting the magistrate's finding that the officers opened the bags without a warrant as erroneous, the district court adopted the remaining ground suggested for suppression (Pet. App. B1-B3). The court of appeals reversed, finding that the marijuana was properly discovered in the course of a valid seizure of the truck and a lawful inventory of its contents (Pet. App. A1-A10).

Petitioner contends that the court of appeals violated the "clearly erroneous" standard in rejecting the magistrate's conclusion, adopted by the district court, that the search did not conform to the city regulations governing impoundment and inventory; that the police officers' failure to comply with proper impoundment procedures rendered the search unlawful; and that search doctrines ordinarily applicable to automobiles do not apply to campers which may serve as temporary residences as well as vehicles.[1] Whatever

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[1] Petitioner raises this claim for the first time in his petition for a writ of certiorari.

the merits of petitioner's contentions, they are not presently ripe for review by this Court. The court of appeals' decision places petitioner in precisely the same position he would have occupied had the district court denied his motion to suppress. If petitioner is acquitted following a trial on the merits, his claims will be moot. If, on the other hand, he is convicted, he will then be able to present his contentions to this Court, together with any other claims he might have, in a petition for a writ of certiorari seeking review of the final judgment against him. Accordingly, review by this Court of the court of appeals' decision would be premature at this time.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

MARCH 1983

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[2] Because this case is interlocutory, we are not responding on the merits to the questions presented by the petition. We will file a response on the merits if the Court requests.